**IN THE HIGH COURT OF JUDIATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2372 OF 1995**

Mallappa Chanbasappa Warad & Ors. .. Petitioners.
Vs.
Kasturbai Heerachand Doshi & Ors. .. Respondents.

Mr.S.D.Thokade for the petitioners.
Mr.P.M.Shah for the respondents.

**CORAM : D.B.BHOSALE, J.**

**DATED : 24TH FEBRUARY, 2005**

P.C.:

. Heard Mr.Thokade, learned counsel for the petitioners and Mr.Shah, learned counsel for the respondents.

2. This writ petition arises out of the judgment and order dated 9.9.1993 passed in Civil Miscellaneous Appeal No.27 of 1993 by which the appeal was allowed. It was filed against the judgment and order dated 22.1.1993 passed by the trial Court below application Exhibit-5 filed by the respondent-plaintiff under Order 39 Rule 1 of the Code of Civil Procedure. This Court while admitting the writ petition on 30th January, 1996 had passed the following order:

> . "Heard the learned Advocate for the petitioners and the respondent no.1.
>
> 2. Rule. Interim order in terms of prayer (c). The undertaking filed by the Petitioner No.2 dated 6.11.1995 is accepted. If the Petitioners want to construct on the property, then they will be required to comply with all legal requirements and particularly the permission of the Solapur Municipal Corporation.
>
> 3. The hearing of R.C.S.No.1047 of 1991 pending in the Court of Civil Judge, Senior Division, Solapur, is expedited and to be disposed of as early as possible.
>
> 4. The learned Advocate for the Petitioner is directed to file undertakings-affidavits of all other petitioners within two weeks from today.

3. The learned counsel appearing for the parties are not in a position to confirm as to whether or not Regular Civil Suit No.1047 of 1991 has been disposed of in pursuance of the directions given by this Court in paragraph 3 of the aforestated order. However, they have fairly agreed for disposal of the writ petition by the following order:

(a) If Regular Civil Suit No.1047 of 1991 is still pending for hearing, the trial Court shall dispose of the same as expeditiously as possible and preferrably within a period of six months from today.

(b) The interim order passed by this Court, in paragraph 2 of the aforementioned order dated 30.1.1996, shall remain operative till the disposal of the suit. The undertakings filed by petitioner no.2 dated 6.11.1995 which was accepted by that order shall remain operative till disposal of the suit. Needless to express that the trial Court shall decide the suit, if not disposed of already, on merits in accordance with law and uninfluenced by the observations made in the orders passed in the proceedings arising out of Exhibit-5 application.

(c) Rule is disposed of in the aforesaid terms.

**(D.B.Bhosale, J.)**